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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/747,841

12/29/2003

Hagai Katz

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EXAMINER

NELSON, FREDA ANN

ART UNIT

PAPER NUMBER

3628

MAIL DATE

DELIVERY MODE

01/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/747,841

Applicant(s)

KATZ ET AL.

Examiner

FREDA A. NELSON

Art Unit

3628

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) ~~within~~ (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 26 December 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-23.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☒ Other: See Continuation Sheet.




JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Continuation of 13. Other: In response to applicant's argument that in regards to claim 1, the cited references do not teach or suggest a method comprising "determining a cost allocation method for each of the plurality of system resources from a plurality of available cost allocation methods, wherein each of the plurality of available cost allocation methods defines a different way of dividing one of the determined costs", the examiner respectfully disagrees. Al-Hilali discloses it is a further object of the present invention to separately measure individual resource usage costs of predefined transactions at the server application that occur in response to user behavior on the client application so that total resource usage caused anticipated server application loads modeled by hypothetical user behavior can be accurately estimated (col. 4, lines 4-16). Al-Hilali further discloses with the individual transaction cost information in tabular form as shown above, it becomes an easy task to construct cost equations for each of the various system resources. Equations may be created for each relevant system resource by multiplying the cost of each transaction for the relevant resource by the number of occurrences of those particular transactions, wherein each of these will provide a component or element of the total cost and can therefore be summed together to arrive at the total usage for that particular resource due to the user behavior that make up the various transactions. Finally, the total number of anticipated users may be multiplied across the summation of these individual components in order to arrive at the total usage for all users. For example, the resource usage equation for the send messages behavior in terms of CPU usage is given by the following equation (col. 17, lines 7-57; see claims 3, 12, and 24).

In response to applicant's arguments that in regards to claim 5, Al-Hilali does not teach or suggest a method "wherein the plurality of available cost allocation methods comprises a per usage time allocation cost method", the examiner respectfully disagrees. Al-Hilali discloses Next, the "cost" of performing the transactions in terms of the relevant system resources is measured. One way this can be done is by creating a transaction load across the network and timing or monitoring different resource usage, such as CPU usage, disk access time, memory usage, etc. The server application is "instrumented" to have transaction counters or other mechanisms to assist in arriving at a per transaction cost or transaction rate cost (col. 4, line 64 -col. 5, line 4; also see tables 3 and 4).

In response to applicant's arguments that in regards to claim 6, Al-Hilali does not teach or suggest a method "wherein the plurality of available cost allocation methods comprises a per active days cost allocation method", the examiner respectfully disagrees. Al-Hilali discloses for example, a user profile may have information that a user logs on once per day and that the user will write five messages. Each message in turn will be five KB in length and be addressed to two recipients. One recipient is local to the subscription or mail service and one remote, thus requiring that the message be sent over the Internet. Additionally, the mail service server application will support 100,000 users and will be available 20 hours a day with a peak usage being two times the average usage (col. 18, lines 10 -18).

In response to applicant's arguments that in regards to claim 8, Al-Hilali does not teach or suggest a method "wherein the plurality of available cost allocation methods comprises a per processing time cost allocation method", the examiner respectfully disagrees. Al-Hilali discloses Next, the "cost" of performing the transactions in terms of the relevant system resources is measured. One way this can be done is by creating a transaction load across the network and timing or monitoring different resource usage, such as CPU usage, disk access time, memory usage, etc. The server application is "instrumented" to have transaction counters or other mechanisms to assist in arriving at a per transaction cost or transaction rate cost (col. 4, line 64 -col. 5, line 4; also see tables 3 and 4).